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10/645,778	08/21/2003	Richard W. Whiting	1483/3	8784
25297 7590 12/23/2008 JENKINS, WILSON, TAYLOR & HUNT, P. A. Suite 1200 UNIVERSITY TOWER 3100 TOWER BLVD., DURHAM, NC 27707				
EXAMINER				
FIELDS, BENJAMIN S				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/645,778

Applicant(s)

WHITING ET AL.

Examiner

BENJAMIN S. FIELDS

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Introduction

1. The following is a **NON-FINAL** Office Action in response to the communication received on 22 September 2008. Claims 1-50 are pending in this application.

Response to Amendments

2. The Examiner withdraws the originally asserted Double Patenting rejection in view of the Applicants filing of a Terminal Disclaimer.

3. **Point of Note Regarding the originally asserted Double Patenting Rejection:** The Examiner notes that there was a typographical error in the original Office Action in that the Double Patenting Rejection is in fact a provisional non-statutory obviousness-type double patenting rejection and not a provisional statutory obviousness-type double patenting rejection.

4. **Note Regarding Applicants Representative Request:** The Examiner acknowledges the Applicant request for a telephone discussion (interview), if after reviewing the contents of the amendment herein any matters were left outstanding. As such, the Examiner requests, that Applicant, upon receiving this Office Action, contact the Examiner to further discuss the outstanding contents further.

5. Applicants Amendments to Claims 1-50 has been acknowledged in that: **NO Claims have been cancelled; NO Claims have been amended; NO Claims have been newly added;** hence, as such, **Claims 1-50 are pending in this application.**

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims **1-13** and **48** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In *re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. In this particular case, Claims **1-13** and **48** are not tied to another

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statutory class, such as any hardware. Thus, it is unclear as to whether or not the claims are mere processes that involve purely human labor.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.: http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-2, 7-12, 14-15, 20-25, and 27-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Bent et al. (US PG Pub. No. 2006/0212385), [hereinafter Bent].

Referring to Claim 1: Bent shows a method for facilitating financial transactions between depositor and a commercial bank, the method comprising: (a) **determining deposit needs of a plurality of depositor groups**; (b) aggregating the deposit needs

of the depositor groups to provide a stable funds source; (c) notifying commercial banks of the availability of the stable funds source and an amount of funds available in the stable funds source; (d) setting an interest rate to be paid to the depositor groups to a predetermined value based on an interest rate that the commercial banks are willing to pay for the stable funds source and an interest rate the depositor groups expect as a return for use of funds in the stable funds source; (e) receiving account postings from the commercial banks; (f) depositing funds from the stable funds source in the accounts; and (g) allowing the depositor groups to withdraw funds from the accounts on a demand basis without penalty (Bent: Abstract; Figures 1-3; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claim 2: Bent discusses a method wherein determining deposit needs of a plurality of depositor groups includes determining deposit needs of trust departments at commercial banks and wherein aggregating the deposit needs includes aggregating funds from the trust departments at multiple different commercial banks (Bent: Page 2, Paragraph 0018-Page 3, Paragraph 0027; See Claims).

Referring to Claim 7: Bent discloses a method wherein setting the interest rate to be paid to the depositor groups to a predetermined value includes setting the interest rate to a value below the interest rate that the commercial banks are willing to pay for the funds (Bent: Abstract; Figures 1-3; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claim 8: Bent shows a method wherein receiving account postings and depositing funds in the accounts include establishing a custodian [administrator] to

manage cash flow into and from the accounts (Bent: Abstract; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claim 9: Bent teaches a method wherein allowing the depositor groups to withdraw funds on a demand basis includes providing a web interface for the depositor groups to access funds in one dollar dominations on a daily basis without penalty (Bent: Abstract; Claims 350-357).

Referring to Claim 10: Bent discloses a method comprising receiving incoming deposits and withdrawal requests from the depositor groups, satisfying the incoming withdrawal requests using the incoming deposits, and updating account records to change ownership of deposited funds without withdrawing funds from the commercial banks (Bent: Abstract; Figures 1-3; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claim 11: Claim 11 parallels the limitations of Claim 9. As such, Claim 11 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 12: Bent discusses a method wherein depositing funds in the accounts includes depositing funds in excess of a federal deposit insurance limit from a single depositor group in a master NOW account of a single commercial bank and providing federal deposit insurance or a collateral for the entire deposit (Bent: Abstract; Figures 1-3; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claim 48: Bent shows a method wherein the depositor groups comprise pooled depositor groups and wherein the accounts comprise master

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negotiated order of withdrawal accounts (Bent: Abstract; Figures 1-3; Page 1, Paragraph 0005-Page 3, Paragraph 0025).

Referring to Claims 14-15, 20-25 and 49: Claims 14-15, 20-25 and 49 are directed towards a computer program product for Claims 1-2, 7-12 and 48. As such, Claims 14-15, 20-25 and 49 are rejected under the same basis as are Claims 1-2, 7-12 and 48 as mentioned supra.

Referring to Claims 27-47 and 50: Claims 27-47 and 50 are the system for the method of Claims 1-2, 7-12 and 48. As such, Claims 27-47 and 50 are rejected under the same basis as are Claims 1-2, 7-12 and 48 as mentioned supra.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3-6, 13, 16-19, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bent in view of Jacobsen (US PG Pub. No. 2003/0023529), [hereinafter Jacobsen].

Referring to Claim 3: Bent teaches the limitations of Claim 1.

Bent, however, does not expressly disclose a method wherein determining deposit needs of a plurality of depositor groups includes determining deposit

needs of different municipalities and wherein aggregating the deposit needs includes aggregating funds from the municipalities.

Jacobsen, in a similar environment, shows a method wherein determining deposit needs of a plurality of depositor groups includes determining deposit needs of different municipalities and wherein aggregating the deposit needs includes aggregating funds from the municipalities (Jacobsen: Abstract; Figures 1-7; Page 1, Paragraph 0006-Page 5, Paragraph 0081).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method and system of Bent for money fund banking with multiple banks and/or rates with the practice of Jacobsen for fully insuring large bank deposits for the purpose of enabling customers a greater selection of deposit divisibility (Jacobsen: Page 1, Paragraphs 0005-0008).

Referring to Claim 4: Bent discusses the limitations of Claim 1.

Bent, however, does not expressly disclose a method wherein determining deposit needs of a plurality of depositor groups includes determining deposit needs of different pension funds and wherein aggregating the deposit needs includes aggregating funds from the pension funds.

Jacobsen, in a similar environment, shows a method wherein determining deposit needs of a plurality of depositor groups includes determining deposit needs of different pension funds and wherein aggregating the deposit needs includes

aggregating funds from the pension funds (Jacobsen: Abstract; Page 1, Paragraph 0006-Page 5, Paragraph 0081).

Referring to Claim 5: Bent teaches the limitations of Claim 5.

Bent, however, does not expressly show a method wherein notifying commercial banks of the availability of the stable funds source includes posting an amount of funds available and the interest rate on a website accessible by the commercial banks.

The Examiner notes although Bent does not expressly teach a method wherein notifying commercial banks of the availability of the stable funds source includes posting an amount of funds available and the interest rate on a website accessible by the commercial banks, such an administrative detail does not patentably distinguish the presently claimed subject matter over the prior art.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Bent for money fund banking with multiple banks and/or rates with and added ability to notifying commercial banks of the availability of stable funds by means of posting an amount of funds available and the interest rate on a website accessible by the commercial banks if they so desired.

Referring to Claim 6: Bent shows the limitations of Claim 1.

Bent, however, does not expressly disclose a method wherein notifying the commercial banks of the availability of the stable funds source includes automatically

emailing the commercial banks of the amount of funds available and the interest rate at which the funds are available.

The Examiner notes although Bent does not expressly teach a method wherein notifying the commercial banks of the availability of the stable funds source includes automatically emailing the commercial banks of the amount of funds available and the interest rate at which the funds are available, such an administrative detail does not patentably distinguish the presently claimed subject matter over the prior art.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Bent for money fund banking with multiple banks and/or rates with and added ability to notifying commercial banks of the availability of stable funds by means of email posting an amount of funds available and the interest rate on a website accessible by the commercial banks if they so desired.

Referring to Claim 13: Bent teaches the limitations of Claim 13.

Bent, however, does not expressly disclose a method wherein the commercial banks report the funds deposited in the accounts as core deposits.

The Examiner notes although Bent does not expressly teach a method wherein the commercial banks report the funds deposited in the accounts as core deposits, such an administrative detail does not patentably distinguish the presently claimed subject matter over the prior art.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Bent for money fund banking with multiple banks and/or

rates with and added ability to allow a bank the ability to report the funds deposited in the accounts as core deposits if they so desired.

Referring to Claims 16-19, and 26: Claims 16-19 and 26 are directed towards a computer program product for Claims 3-6 and 13. As such, Claims 16-19 and 26 are rejected under the same basis as are Claims 3-6 and 13 as mentioned supra.

Response to Arguments

12. Applicant's arguments filed 22 September 2008 have been fully considered but have been found to be **moot** and **non-persuasive**. The Applicants argue:

Argument A

Claim Rejections – 35 U.S.C. §102

Claims 1, 2, 7-12, 14, 15, 20-25, and 27-50 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2006/0212385 to Bent et al. (hereinafter, "Bent"). This rejection is respectfully traversed. Independent claims 1, 14, and 27 respectively recite a method, a computer program product, and a system where deposit needs of plural deposit groups are determined and aggregated to provide a stable funds source. (Emphasis added.) Commercial banks are notified of the stable funds source. An interest rate to be paid to the depositor groups is set to a predetermined value to a rate that the commercial banks are willing to pay for the stable funds source and that the depositor groups expect as a return on investment for use of their funds. Account postings from the commercial banks are received and the funds in the stable fund source are deposited in the accounts. The deposit groups are allowed to withdraw funds from the accounts on demand without penalty. Thus, independent claims 1, 14, and 27 recite the aggregation of funds from plural depositor groups to form

a stable funds source and the setting of an interest rate that banks are willing to pay for the stable funds source and the interest rate that the depositor groups expect as a return for use of the funds in the stable funds source. The availability of a stable funds source aggregated from plural depositor groups and that can be usable for core deposits allows banks to reduce their percentages of brokered deposits and thereby increase the likelihood of a favorable regulatory rating (see page 15, lines 12-16 of the present specification). The fact that the funds from the depositor groups are aggregated increases the likelihood that the depositor groups will obtain a more favorable interest rate than that obtained by an individual investor depositing money with a bank.

There is absolutely no disclosure, teaching, or suggestion in Bent of a method, a computer program product, or system where deposit needs from depositor groups are aggregated to provide a stable funds source or where an interest rate to be paid is set to a value based on an interest rate that banks are willing to pay for the stable funds source and an interest rate that the depositor groups expect as a return for use of the funds in the stable funds source. Rather than being directed toward such an aggregating method, Bent is directed to a system where an individual deposits funds in multiple insured deposit accounts to insure that the entire amount of the individual's deposits are FDIC insured. For example, Bent states:

In practice, when an investor's account balance exceeds \$90,000 in any one account, the excess funds are automatically moved to a second deposit account at another pre-selected bank. (See paragraph [0010] of Bent.)

In the above-quoted passage, Bent indicates that the method disclosed therein is directed to managing the account of an individual investor, rather than grouping or aggregating the funds of plural depositor groups to provide a stable funds source as claimed. Accordingly, for this reason alone, the rejection of the claims as anticipated by Bent should be withdrawn.

Moreover, Bent fails to disclose the setting of an interest rate based on the stable funds source as claimed. The only mention in Bent of an interest rate appears in paragraph [0012], which states as follows:

As a result of the present invention the investor earns interest on the balance in his Insured Deposit Account where the interest rate earned can be the same regardless of the bank(s) selected, or may vary depending on the banks selected, while continuing to qualify his account funds for FDIC insurance.

In the above-quoted paragraph, Bent mentions that an investor earns interest on the balance in his insured deposit account. There is no disclosure of how the rate is set, not to mention setting the rate based on the amount that banks are willing pay for the availability of a stable funds source containing the aggregate deposits needs of plural deposit groups as claimed. Thus, for this additional reason, the rejection of the claims as anticipated by Bent should be withdrawn.

Regarding Argument A

The Examiner respectfully disagrees. Bent does in fact teach a system and method where deposit needs from depositor groups are aggregated to provide a stable funds source and where an interest rate to be paid is set to a value based on an interest rate that banks are willing to pay for the stable funds source and an interest rate that the depositor groups expect as a return for use of the funds in the stable funds source, not simply toward a system where an individual deposits funds in multiple insured deposit accounts to insure that the entire amount of the individual's deposits are FDIC insured. Bent discloses this aggregation at least at (Bent: Abstract; Claims 99, 107, 115, 129, 143, 151, 159, 173, 201).

Furthermore, Bent does disclose the setting of an interest rate based on the stable funds source as claimed at least at (Bent: Figure 1; Page 2, Paragraphs 0012, 0019; Claims 1-6).

Argument B

Claim Rejections – 35 U.S.C. §103

Claims 3-6, 13, 16-19, and 26 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bent in view of U.S. Patent Application Publication No. 2003/0023529 to Jacobsen (hereinafter, "Jacobsen"). This rejection is respectfully traversed.

Claims 3-6 and 13 depend from claim 1. Claims 16-19 and 26 depend from claim 14. As stated above with regard to the rejection of claims 1 and 14 as anticipated by Bent, Bent fails to teach or even remotely suggest aggregating the deposit needs of plural depositor as a stable funds source or setting an interest rate to be paid by the commercial banks based on an amount that the banks are willing to pay for the stable fund source and an interest rate that the depositor groups expect as a return for use of funds in the stable funds source. Jacobsen likewise lacks such teaching or suggestion. Jacobsen, like Bent, is directed to a system for managing an individual depositor's account in excess of FDIC insurance limits such that the entire amount of the depositor's funds will be FDIC insured.

For example, Jacobsen states:

In a preferred embodiment of the present invention, a potential deposit amount that exceeds an established deposit insurance limit is processed using a computer implemented methods so that the total amount to be deposited is fully insured. The order to process the potential deposit is submitted to the processor, which establishes multiple deposits, each with a different bank, for the customer seeking to deposit the potential deposit amount. (Emphasis added.) (See paragraph [0009] of Jacobsen.)

In the above-quoted passage, Jacobsen indicates a deposit for a customer is divided among multiple banks. There is no mention of aggregating funds from plural depositor groups to provide a stable funds source or setting an interest rate based on an amount that commercial banks are willing to pay for the stable funds source and that the deposit groups expect for a rate of return on the stable funds source.

Moreover, rather than setting the interest rate to be paid based on the aggregate funds of plural depositor groups, Jacobsen indicates that the rate is set based on a rate acceptable to each individual depositor. For example, Jacobsen states:

Each relationship bank 105, 120, 125 seeking placement of customer funds through the IDPS 100 will establish a rate acceptable to its customer ("depositor" 115, 130, 135) for deposits in one or more available maturities. (See paragraph [0065] of Jacobsen.)

The above-quoted passage teaches the exact opposite of the claimed invention. Rather than setting a rate of interest based on the use of aggregated funds as a stable fund source, Jacobsen indicates that the interest rate is set based on the needs of each individual depositor. Accordingly, for this additional reason, the rejection of the claims as unpatentable over Bent in view of Jacobsen should be withdrawn.

Regarding Argument B

Any additional arguments filed 22 September 2008 have been fully considered but have been found to be **moot** and **non-persuasive**. As the remaining claims depend directly or indirectly from the independent claims mentioned/discusses above, the Examiner maintains all previously asserted rejections.

Examiner Note

13. **The Examiner has pointed out particular reference(s) contained in the prior art of** record within the body of this action for convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. **Applicant**, in preparing the response, should **fully consider the entire reference** as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Conclusion

14. Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached MONDAY THRU FRI between the hours of 9AM and 7PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at 571.272.6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields

16 December 2008

/Harish T Dass/

Primary Examiner, Art Unit 3692